LAW OFFICES

POTTER ANDERSON & CORROON

DELAWARE TRUST BUILDING

WILMINGTON, DELAWARE 19801

WILLIAM [illegible]
DAVID R. [illegible]
WILLIAM [illegible]
RICHARD F. CORROON
[illegible] P. SINCLAIR
THEO. [illegible]
JOSEPH H. GEOGHEGAN
HUGH CORROON
RICHARD L. MCHARGH
CHARLES F. RICHARDSON, III
E.D. GRIFFEN, JR.
ROBERT K. PAYSON
LEONARD D. TOGMAN
RICHARD L. POOLE
H. STANLEY LYNCH
MICHAEL D. GOLDMAN
VANCE A. FUNK III
JAMES F. BURNETT
PETER M. SIEGLAFF
DAVID A. ANDERSON

CLARENCE A. SOUTHERLAND
COUNSEL

TELEPHONE
658-6771
AREA CODE 302

CABLE ADDRESS
WARDGRAY

February 23, 1972

Mr. John V. Ingham
121 Broadbent Road
Northminster
Wilmington, Delaware 19810

Mr. Eugene R. Perry
400 Foulk Road
Wilmington, Delaware 19803

Re: Land Redevelopment Company

The County has suggested that an additional aspect of this arbitration proceeding should be referred to the arbitrators. This deals with the nature of the award and the form of the release from Land Redevelopment to the County.

As we understand the award, it is an award of money damages in respect only to those events which occurred prior to the date of the close of the hearings on December 20, 1971. We submit that there is no applicable principle which would permit an award to cover items of possible damage in the future which has not been put before the arbitrators.

If we understand the County's position correctly, it is that Land Redevelopment should commit itself to be responsible for all future problems of pollution or leaching which may develop at any time in the future without regard to the causes of any such pollution or leaching. This is an untenable position for several reasons.

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The record is uncontradicted that the County and the County alone determined what material could be deposited at the landfill and how the operation should be conducted. Cf. Ward 58-59.

As further evidence that the County controlled the operation of the landfill, paragraph 9(3) of Ward Exhibit 1 states in part:

> "In the event that the Delaware State Water and Air Resources Commission changes the standards applicable to this paragraph, then in that event this paragraph shall be renegotiated."

In other words, Ward was not obligated at his cost to meet any new standards or regulations which might be required by the regulatory body after the landfill was put in operation. This paragraph alone should put an end to any contention of the County that Ward should be responsible for any and every contingency that might develop as a result of the landfill operation.

Paragraph 18(c) of the agreement (Ward Exhibit 1) provides in part:

> "Owners agree at no cost to them to the operation of a research and testing program in cooperation with the Delaware Water and Air Resources Commission and possibly with the University of Delaware."

Again the evidence is uncontradicted that all testing arrangements were made between the County and the University of Delaware, Varrin 705, Banerji 431.

One of the principal items presented to the arbitrators was the effect of the relocation of Pond 4 to the top of the landfill when space for the dumping of garbage was being exhausted in February or March of 1971. Karins, the County Engineer, admitted that no one realized the problems that might be created by the placing of Pond 4 on top of the landfill, Karins 548, 665. Even the University of Delaware consultants admitted that they had seen the pond on top of the landfill prior to the torrential rains of the weekend of July 4, 1971 and had done nothing about it, Varrin 721, 726. Apparently Olson had little to do with the landfill until after July of 1971 for he testified that he was not involved in the relocation of the pond and did nothing but provide "technical support for Dr. Varrin", Olson 822.

It is not surprising that the University of Delaware consultants did nothing to warn either the County or Ward of the problems which might be created by the location of the pond on top of the landfill, for Varrin who was the principal consultant during the landfill operation admitted that he had had no other experience with a landfill, Varrin 714. It is apparently conceded by all of the witnesses that the problems which could develop as a result of the relocation of Pond 4 were not brought to the attention of Ward or the County.

It was also conceded that even after the July 4 weekend when Ward made every effort to find out what had caused the leaching he was given no real information or satisfactory reply. Karins admits that his correspondence with the consultants was misfiled and never transmitted to Ward, Karins 550. See also the stipulation on the record whereby Karins admitted that the problem which might be caused by the pond was not called to the attention of anyone prior to the events of the weekend of July 4, 1971, Karins 726, 727.

Land Redevelopment concedes that it is now responsible for proper grading and draining of the landfill so that any excessive amount of water will not collect on top of the garbage, but on the basis of all the evidence in the case this should be the extent of its liability. Nothing else has been suggested either by the County or its consultants.

With this record in mind it is wholly unreasonable and beyond the scope of the present arbitration agreement for the County to contend that Ward must now give a blanket release in respect to anything which might occur in the future. Who knows what other problem areas may exist which have not been called to the attention of Ward or the County by the University of Delaware consultants. If, for example, there is a pollution of the stream through the escape of garbage in some other manner from the landfill, it will be easy enough for the University of Delaware consultants after the fact to say "It should have been done another way." As previously noted, all that has been said up to the present time is that water must not be allowed to collect on top of the landfill. Beyond this, if other events occur which result in the need for corrective action, then these may very well be the responsibility of the County which controlled the landfill, or even of the University of Delaware whose consultants may have failed to give adequate instructions to the County and Ward in respect to the precautions which should have been taken.

We are enclosing with this letter a proposed form of release which we believe is consistent with the facts of the case before the arbitrators and is fair and equitable to all parties.

Very truly yours,

William Poole

WP:G
Enclosure
cc: William H. Uffelman, Esq.
Mr. William C. Ward

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